

Joint Committee on Boards, Commissions, and Consumer
Protection

BACKGROUND PAPER FOR HEARING

December 6, 2005

BOARD OF BARBERING AND COSMETOLOGY

BACKGROUND, IDENTIFIED ISSUES, AND QUESTIONS

BRIEF OVERVIEW OF THE BARBERING AND COSMETOLOGY PROFESSION AND THE BOARD OF BARBERING AND COSMETOLOGY

The Board of Barbering and Cosmetology (Board) licenses barbers, cosmetologists, electrologists, estheticians, and manicurists after determining through an examination that applicants possess the minimum skills and qualifications necessary to provide safe and effective services to the public. The Board's mission is to protect consumers from harm by licensees through its licensing and enforcement programs. Currently, the Board has an annual budget of approximately \$13 million with 75.5 permanent full-time staff and 17 temporary examination program employees for a total of 92.5 positions. Examinations are administered on a daily basis at two examination facilities, one in Fairfield and the other in Glendale. The Board administers roughly 30,000 examinations a year. The Board regulates approximately 460,000 licensees, including 250,000 cosmetologists, 105,000 manicurists, 21,000 barbers, 30,000 estheticians, 3,000 electrologists, and 40,000 establishments.

The Board was created in 1992 after the passage of enabling legislation (AB 3008, Chapter 1672, Statutes of 1990) that merged the Board of Barber Examiners and the Board of Cosmetology, both of which were established in 1939. The merged Board consisted of five public members and four members representing the professions. The Governor appointed three of the public

members and four professional members. The Senate Committee on Rules and the Speaker of the Assembly each appointed one public member.

In 1996, the then-named Joint Legislative Sunset Review Committee (Joint Committee) recommended that the Board be eliminated. Like all boards in the Department of Consumer Affairs (Department), the Board functioned semi-autonomously. Once the Board was sunsetted, all of its functions, duties and powers were transferred to the Director of the Department. The result was the creation of the Barbering and Cosmetology Program in 1997, which was led by a Program Administrator, appointed by the Department Director. The Program experienced another change in 1999, when Senate Bill 1306 (Senate Committee on Business and Professions), Chapter 656, Statutes of 1999, changed the Program's name to the Bureau, and required the Bureau be subject to sunset reviews. The Bureau was reviewed in 2002-03.

SB 1482 (Polanco), Chapter 1148, Statutes of 2002, recreated the Board of Barbering and Cosmetology. The Board is once again comprised of nine members, with the composition and appointing authority exactly as it was at its inception in 1992.

PRIOR SUNSET REVIEW

The Barbering and Cosmetology program was last reviewed by the Joint Committee three years ago (2002-03). The Joint Committee identified a number of issues and made the following recommendations:

- The Board should be given clear authority to inspect establishments and issue citations with administrative fines at the time of a school inspection;
- The Board should review and revise the existing fine structure and promulgate regulations to revise it. The Board should also take steps to ensure that they and the Bureau for Private Postsecondary and Vocational Education (BPPVE) are not issuing citations for the same violations;
- Implementation of photographic licensure and that the examination processes be streamlined;
- The Board should assess actual costs for licensure examinations;
- Reciprocity should be allowed for all licensees of the Board;
- The Board's occupational analysis should review the 1600-hour training requirement for cosmetologists;
- The Board should evaluate the equivalency of the national exam;

- The Board should conduct a study to assess the costs and benefits associated with requiring all applicants to submit fingerprint cards for background investigations;
- The voluntary license for barbering instructors and cosmetology instructors and the corresponding continuing education requirements should be eliminated;
- The Board should review all components of the apprenticeship program and the externship program;
- The Board should assess the costs and benefits associated with same day licensing. If the Board determines that the benefits of same day licensing outweigh the costs, the Board should immediately plan and implement safety measures to protect exam site staff and undisputed licenses; and
- The Board should work collaboratively with the Office of Examination Resources to assess the validity of aggregate scoring for Board applicants.

A number of issues identified in the last review are still ongoing issues. The following are areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff have asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

ISSUE #1: Should the profession be regulated by an independent board rather than by a bureau under the Department?

Issue #1 question for the Board: *Is an appointed board the most appropriate regulatory entity for the barbering and cosmetology profession? Why or why not? Why is an independent board more appropriate than a bureau with more direct accountability to the Governor? Does the profession continue to necessitate regulation in the first place?*

Background: California Business and Professions Code Section 473.3 states that "Prior to the termination, continuation, or reestablishment of any board or any of the board's functions," the Joint Committee is required to hold public hearings, during which "each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare."

Additionally, Governor Schwarzenegger proposed in January of this year to eliminate 88 boards and commissions, including eliminating all of the boards

within the Department and converting most of them to bureaus. This Government Reorganization Proposal was based partly upon recommendations from the Governor's California Performance Review (CPR), but went further in recommending board elimination than did the CPR. The Governor withdrew this proposal in February.

ISSUE #2: Outbreaks of infection at foot spas have occurred.

Issue #2 question for the Board: *What has the Board done or what could the Board do to address this problem? Did the Board use its authority to temporarily shut down the establishments in San Jose? Has the Board ever used this authority? Does the Board feel that it needs more powers or authority to address issues such as this? If so, please explain and identify whether the Board has asked for such authority. What is the status of the working group that is tasked to determine how to improve the safety of pedicure equipment and ensure consumer protection?*

Background: In 1999 and 2000, there was an outbreak of infection from a pedicure salon in Watsonville, California, affecting more than 100 women. In November 2004, a growing number of people started complaining of leg lesions and infections on their legs in San Jose. This time, there were 27 salons involved and over 120 people infected with mycobacterial infections as a result of pedicures.

SB 362 (Figueroa) Chapter 788, Statutes of 2003, established authority for the Board to temporarily close an establishment for egregious health and safety violations that constitute an immediate threat to public health and safety. The legislation was introduced to give the Board greater enforcement authority when an establishment poses an immediate public health and safety threat. The bill authorized the Board to suspend the operation of an establishment for up to 30 days upon finding egregious health and safety violations constituting an immediate threat to public health and safety.

AB 1263 (Yee) of 2005 would have required the Board to adopt regulations that set forth standards and proper protocol for the use of disinfectants between patrons in all salons providing manicure and pedicure services; however, the bill was vetoed. The Governor's veto message directed the Department to convene a working group consisting of the Board, county health officials, consumer groups, and pedicure equipment manufacturers, and other interested parties, to determine how to improve the safety of pedicure equipment and ensure appropriate consumer protection.

ISSUE #3: Booth renting is a fast growing sector in this industry.

Issue #3 question for the Board: *What, if anything, has the Board done to examine this issue? Does the Board feel that this is an area that needs attention? Is the Board collecting information pursuant to AB 2449 of 2002?*

Background: Booth renters are self-employed technicians that rent space within a salon to operate their own independent salon business. The rent is paid as a flat fee, and the booth renter is responsible for her/his own payroll taxes and business expenses.

According to information provided by the Professional Beauty Federation of California (PBFC), it is important for those responsible for regulating the beauty industry in this state to accumulate and analyze data on the rapidly growing industry segment of booth renting. If, as PBFC argues, many in the booth renting sector operate illegitimately, state regulators should identify these problems, correlate health and safety violation and tax evasion statistics, and propose regulatory/statutory reforms to address discovered problems.

To gather more information on booth renting, AB 2449 (Correa), Chapter 316, Statutes of 2002, requires licensees of the Board to provide certain, specified information to the Board when they renew their license, including identifying themselves on the application as one of the following: (1) employee; (2) independent contractor or booth renter; or (3) salon owner. The bill also requires an establishment to report at the time of license renewal, whether: (1) he or she has a booth renter operating in the establishment; or (2) he or she has an independent contractor operating in the establishment. The Board is required to report to the Legislature the licensee information collected, including an assessment of whether a certain type of licensee is more likely to receive complaints or citations, or to fail to pay taxes, and any recommendation on how to remedy problems.

ISSUE #4: Threading is not included in the practice of barbering and cosmetology.

Issue #4 question for the Board: *What is the Board's position on the practice of threading? What conclusions has the Board reached as a result of logging complaints associated with threading?*

Background: Threading is the practice of removing hair from its follicle by pulling and twisting a special cotton thread along a row of unwanted hair. The twisting action of the thread traps the hair and lifts it out of the follicle. Currently, threading is not included in the practice of barbering and cosmetology. The threading exemption will become inoperative on July 1, 2007.

The Board was required to report any complaints received about the practice of threading to the Department and the Joint Committee prior to September 1,

2005. The Board indicates that there were only five complaints associated with threading.

AB 163 (Bermudez) of 2005 would have revised the definition of hair threading to include the possible incidental trimming of eyebrow hair. This bill was vetoed.

AB 282 (Bermudez, Chapter 66, Statutes of 2003) provided that threading is not included in the practice of barbering and the practice of cosmetology.

ISSUE #5: The Board currently meets on a bi-monthly basis.

Issue #5 question for the Board: *Why does the Board feel that it is necessary to meet so many times a year? Is this the best and most efficient use of board member and staff time?*

Background: It is unclear why it is necessary for the Board to meet so often. The Joint Committee is not aware of any other Department board that meets six times a year. It is standard for boards to meet quarterly.

ISSUE #6: A performance audit conducted in 2002 by the Department's Internal Audit Office revealed some program deficiencies – the enforcement program in particular.

Issue #6 question for the Board: *What has the Board done to address the findings of the audit? Is the Board using its strategic planning process to measure the effectiveness of its operations? What changes have been made to increase the effectiveness of complaint activities? Have the deficiencies cited in the inspection program been addressed?*

Background: The Department's Internal Audit Office conducted a performance audit of the then-Bureau in 2002. The audit found that the program lacked important elements that could assist management in measuring the success of its licensing and enforcement operations. The audit stated that the effectiveness of complaint activities could be improved. Specifically, the following areas were concerns that were recommended to be addressed:

- Untimely acknowledgment letters;
- Untimely delays in completing case files;
- Inaccurate determination of processing times for cases opened from inspection reports;
- Missing case files;
- Incomplete file documentation; and

- Inaccurate reporting of processing time for internal complaints opened for establishment inspections.

Deficiencies in the inspection unit were also cited. Specifically, the audit states that inspection operations are inadequate to ensure compliance with regulatory and internal policies and procedures. The audit recommends the monitoring and reporting of performance to ensure the Board's inspection function is in compliance with such policies and procedures, and that it is effective and efficient. Additionally, alternatives to current inspection procedures should be considered, such as decreasing the number of "Closed for the Day" stops and/or conduct specific, targeted violation sweeps in areas identified as having the greatest risk of harming consumers.

The Department's Internal Audit Office has recently begun another performance audit of the Board. The results and findings of the audit are expected in the Spring of 2006.

ISSUE #7: Although the Board has the authority and capability to increase fine amounts, it has not done so.

Issue #7 question for the Board: *Why has the Board not modified its Administrative Fine schedule? What changes does the Board see as needed to serve as a sufficient deterrent? When does the Board anticipate that changes will be made?*

Background: The Board's Cite and Fine program was initiated in December 1994. Administrative citations are issued for violation of the Board's rules and regulations, primarily related to health and safety issues. Violations range from improper disinfection to unlicensed activity, with fines ranging from \$25 to \$500 for first violations. Most fines are waivable on the first offense, provided the offense is corrected within 30 days. A first offense may only have a \$25 fine assessment. Often, this fine does not serve as a deterrent and inspectors usually have to conduct multiple inspections before compliance is achieved. The fine amounts increase for second and third offenses.

SB 362 (Figueroa), Chapter 783, Statutes of 2003, provided for the revision of the Board's fine structure by increasing the maximum amount that could be imposed for administrative fines from \$2500 to \$5000. Although, to date, no changes have been made by the Board.

The Board's 2005 strategic plan notes that the Administrative Fine schedule is being reviewed and updated to strengthen the cite and fine program. The Board states that it is currently drafting regulations to revise its administrative fine schedule and plans to obtain public input on the recommended language.

ISSUE #8: Applicants are not required to submit fingerprint cards for background investigations. The Board is recommending that fingerprinting be required.

Issue #8 question for the Board: *How did the Board come to the conclusion that fingerprinting should be implemented? Does the Board believe that fingerprinting will better protect consumers? Please discuss the Board's findings on criminal history background checks.*

Background: A number of boards and bureaus within the Department are required to conduct criminal background checks on their applicants. At the last sunset review, the Joint Committee and the Department recommended that the Board conduct a study to assess the costs and benefits associated with requiring all applicants to submit fingerprint cards for background investigations.

The Board conducted a study to determine the feasibility of implementing fingerprint requirements for applicants and licensees. Currently, the Board must rely on the applicant to provide information on any past criminal offenses. It is common that an applicant will not disclose their convictions and the Board may never know if a criminal record exists. Without the verification of the Department of Justice, the Board cannot guarantee that a licensee has not committed crimes that would have constituted a denial of their license.

ISSUE #9: The Board continues to spend more on its examination program than it makes. Additionally, the Board has submitted a budget change proposal in the amount of \$393,000 in FY 2005-06 as well as a permanent augmentation of \$580,000 for FY 2006-07 for the administration of examinations.

Issue #9 question for the Board: *Does the Board assess actual costs for its exams? What options has the Board considered to reduce its exam expenditures? Has the Board considered increasing licensing fees to cover the costs of exams?*

Background: Business and Professions Code Section 7423 establishes the license fees for individual practice. The initial license fee for cosmetologists, barbers, and electrologists is \$50; the initial esthetician license fee is \$40; and the initial manicurist license fee is \$35. These fees are all at their statutory maximum and have not been increased since 1993.

Business and Professions Code Section 7423 also states that the fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination. Further, Business and Professions Code Section 7421 requires that the fees collected by the Board shall be in amounts necessary to cover the expenses of the Board in performing its duties.

To determine where the licensing fees should be set, Board staff conducted a review of all expenditures that the Board incurs and found that the Board expends approximately \$94.00 on processing, examining, and license issuance.

ISSUE #10: The Board spends only 39% of its budget on enforcement.

Issue #10 question for the Board: *Does the Board believe it should be spending a larger percentage of its budget on its enforcement program? Please explain why the Board spends such a large percentage of its budget on its examination program. What is the status of the General Fund loan repayment?*

Background: In the last two years, the Board has increased expenditures on their enforcement program by 16%; however 39% is still low. Typically, other consumer boards spend over 60%.

In FY 2002-03 the Board was required to make a \$9 million loan to the General Fund. The Board indicates that it will be receiving a \$5.5 million partial repayment in FY 2005-06.

ISSUE #11: The law does not allow reciprocity for any of the Board's licensing categories.

Issue #11 question for the Board: *Is the Board in the process of providing for reciprocity? If so, what is being recommended? Is this in concert with what was recommended by the Joint Committee?*

Background: California does not have reciprocity with any other state. Individuals from other states and countries must meet California specific eligibility requirements and pass both a written and practical examination, regardless of years of experience in other states or countries. Reciprocity will lower market barriers, increase competition, promote employment, and facilitate the ability of licensed professionals to begin working in California.

During the last sunset review, it was recommended that reciprocity be allowed. The recommendation included a directive that the Board consider a license-by-credential statute in which professionals who hold a license in good standing in other states and have been practicing for a number of years are granted a license in California without sitting for an examination in California.

ISSUE #12: The law that established a process whereby barbering instructors and cosmetology instructors could voluntarily obtain a license from the Board was repealed pursuant to the recommendations of the Joint Committee. However, the Board is proposing that the voluntary instructors license be put back in place.

Issue #12 question for the Board: *What is the point of a license that is voluntary – isn't that an oxymoron? Doesn't a voluntary license negate the idea of licensure altogether? If a voluntary license is in place, wouldn't the public be misled into thinking that all instructors must be licensed? Has the Board considered establishing by regulation the minimum qualifications required of cosmetology or barbering instructors instead of providing for the licensure and examination of instructors?*

Background: A process whereby an individual may voluntarily obtain a barbering or a cosmetology instructor's license was repealed; however, the Board is seeking to reinstate that voluntary license process. Previously, an individual could sit for the instructor examinations (written and practical) provided that they (a) have completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent; (b) are not subject to denial pursuant to Section 480; (c) hold a valid license to practice cosmetology or barbering in this state; and, (d) have done at least one of the following: (1) completed a 600 hour cosmetology or barbering instructor training course in an approved school in this state or equivalent training in an approved school in another state; (2) completed not less than the equivalent of 10 months of practice as a teacher assistant or teacher aide in a school approved by the bureau; or, (3) practiced cosmetology or barbering in a licensed establishment in this state for a period of one year within the three years immediately preceding application, or its equivalent in another state. The Board's proposed instructor language includes all of the above.

AB 2168 (Correa) of 2004 would have extended the provisions governing licenses for barbering or cosmetology instructors until January 1, 2006, but the bill was vetoed. The Governor's veto message stated that when the Board was reviewed by the Joint Committee in 2002, the Committee originally recommended the repeal of the license for instructors of barbering and cosmetology because the licenses were voluntary and the standards and requirements to obtain them were flawed and outdated. However, the recommendation was amended to allow the Board one year to study and address this issue; to date the Board has failed to complete those guidelines.

ISSUE #13: During previous reviews, the Joint Committee felt that the number of hours and the curricula required in cosmetology and/or barbering school was an artificial barrier to entering the profession and no evidence existed to justify the need for such lengthy training, even in specialty areas. The Board was directed to review the 1600-hour training